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Hearing Date: September 14, 2022
Opposition Date: June 14, 2022
Reply Date: July 14, 2022

Attorneys for the Eurizon Defendants

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and Bernard L. Madoff,

Plaintiff,

v.

INTESA SANPAOLO SPA (AS SUCCESSOR
IN INTEREST TO BANCA INTESA SPA),
EURIZON CAPITAL SGR SPA (AS

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 12-01680 (CGM)

ORAL ARGUMENT REQUESTED

SUCCESSOR IN INTEREST TO EURIZON
INVESTIMENTI SGR SPA, F/K/A NEXTRA
INVESTMENT MANAGEMENT SGR SPA,
AND EURIZON ALTERNATIVE
INVESTMENTS SGR SPA, FKA NEXTRA
ALTERNATIVE INVESTMENTS SGR SPA),
EURIZON LOW VOLATILITY F/K/A
NEXTRA LOW VOLATILITY, EURIZON
LOW VOLATILITY II F/K/A NEXTRA LOW
VOLATILITY II, EURIZON LOW
VOLATILITY PB F/K/A NEXTRA LOW
VOLATILITY PB, EURIZON MEDIUM
VOLATILITY F/K/A NEXTRA MEDIUM
VOLATILITY, EURIZON MEDIUM
VOLATILITY II F/K/A NEXTRA MEDIUM
VOLATILITY II, EURIZON TOTAL RETURN
F/K/A NEXTRA TOTAL RETURN,

Defendants.

NOTICE OF MOTION TO DISMISS

PLEASE TAKE NOTICE that, upon the Eurizon Defendants' Memorandum of Law in Support of Their Motion to Dismiss dated April 15, 2022, the accompanying Declaration of Andrew Ditchfield dated April 15, 2022 and the exhibits thereto, and all prior pleadings and proceedings herein, the Eurizon Defendants¹ will move this Court, on September 14, 2022, at 10:00 a.m. prevailing Eastern Time, before the Honorable Cecelia

¹ The Complaint (Ditchfield Decl. Ex. 1), ECF No. 1, was filed on May 31, 2012. It was amended by stipulation and order entered on March 29, 2022 (Ditchfield Decl. Ex. 2), ECF No. 93, to: (i) dismiss Count Two (the Trustee's claims to recover subsequent transfers that the Defendants allegedly received from the Kingate Funds, totaling approximately \$93,661,909); and (ii) dismiss various defendants from the proceeding. Accordingly, the only remaining defendants are Eurizon Capital SGR SpA ("Eurizon Capital"), Eurizon Low Volatility ("Low Volatility"), and Eurizon Medium Volatility ("Medium Volatility") (the "Eurizon Funds") (together with Eurizon Capital, the "Eurizon Defendants"). The Complaint characterizes the Eurizon Funds—the entities that are alleged to have received the subsequent transfers at issue in this action—as “fondo commune investimento,” Compl. ¶¶ 25, 28, which is not a legal entity under Italian law. The assets of these funds were managed and promoted by the asset manager, Eurizon Capital. Moreover, on August 1, 2013, the assets of Medium Volatility were merged into Low Volatility, which is the only fund that exists today and is managed by and acts through Eurizon Capital. Unless otherwise specified, all “ECF No. ___” citations refer to Adv. Pro. No. 12-01680.

G. Morris, United States Bankruptcy Judge, for an order dismissing with prejudice the Complaint filed by plaintiff Irving H. Picard, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and Bernard L. Madoff (ECF No. 1), as amended by the Stipulation and Order entered on March 29, 2022 (ECF No. 93), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable here by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Stipulation and Order entered on March 29, 2022 (ECF No. 93), all papers responsive to the Eurizon Defendants' Motion to Dismiss shall be served and filed no later than June 14, 2022, and all reply papers in further support of the Eurizon Defendants' Motion to Dismiss shall be served and filed no later than July 14, 2022.

PLEASE TAKE FURTHER NOTICE that, pursuant to Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, the Eurizon Defendants do not consent to the entry of final orders or judgment by this Court.

Dated: April 15, 2022
New York, New York

Respectfully Submitted,

DAVIS POLK & WARDWELL LLP

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